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No. 04-87

IN THE

Supreme Court of the United States

KOYO SEIKO CO., LTD., *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF AMICUS CURIAE FOR THE GOVERNMENT OF JAPAN IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF AMICUS CURIAE

This case involves a dispute over a controversial practice known as "zeroing."[1] The Tariff Act of 1930 ("Tariff Act"), 19 U.S.C. §§ 1673 *et seq.*, provides for the imposition of

[1] Pursuant to this Court's Rule 37.6, Japan notes that no part of this brief was authored by counsel for any party, and no person or entity other than Japan made any monetary contribution to the preparation or submission of the brief. This brief is filed with the written consent of all parties pursuant to Rule 37.3(a). Copies of the requisite consent letters have been filed with the Clerk.

duties on foreign goods that have been "dumped" in the United States—*i.e.*, those that have been sold in the United States "at less than [their] fair value" and which have caused or threaten to cause "material injury" to a United States industry. *Id.* § 1673. In assessing antidumping duties, the United States Department of Commerce ("Commerce") calculates a "dumping margin"—*i.e.*, "the amount by which the normal value [of the subject merchandise] exceeds the export price or constructed export price of the subject merchandise." *Id.* § 1677(35)(A). Commerce then calculates a "weighted-average dumping margin" for the merchandise "by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." *Id.* § 1677(35)(B). In calculating a weighted-average dumping margin, Commerce treats all "negative" dumping margins (those where "fair value" is less than the export price or constructed export price) as "zero." This practice is known as "zeroing."

The Government of Japan has a direct and substantial interest in this case. Commerce's use of "zeroing" has resulted in the imposition of increased antidumping duties against petitioners Koyo Seiko Co., Ltd., a Japanese manufacturer of automobile parts, including tapered roller bearings, and Koyo Corporation of U.S.A., its wholly-owned U.S. subsidiary (collectively, "Koyo"). Several similar cases involving Japanese bearing manufacturers are currently pending in U.S. courts. Japan estimates that the combined amount of increased antidumping duties resulting from Commerce's practice of "zeroing" in each of these cases is nearly $14 million. That figure will only continue to increase so long as Commerce continues to treat negative dumping margins as "zero."

But the excessive antidumping duty liability facing these Japanese companies is not the only matter that concerns Japan. The World Trade Organization ("WTO"), of which

both the United States and Japan are Members, has repeatedly held that the practice of zeroing violates the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement")—an international agreement to which the United States is bound—which requires "*a fair comparison* * * * between the export price and the normal value" of a foreign product. Anti-Dumping Agreement art. 2.4 (emphasis added). Indeed, just recently, the WTO reaffirmed its determination that zeroing violates the Anti-Dumping Agreement in a proceeding brought by Canada against the United States. *See* Report of the Appellate Body, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (Aug. 11, 2004) ("*US – Softwood Lumber*"). As the WTO explained: "Zeroing means, in effect, that at least in the case of some export transactions, the export prices are treated as if they were less than what they actually are. * * * Zeroing thus inflates the margin of dumping for the product as a whole." *US – Softwood Lumber* ¶ 101 (emphases omitted).

Japan is thus deeply concerned that the excessive anti-dumping duty liability facing Koyo and other Japanese manufacturers is based on a practice that has been found to violate an international agreement that is binding on the United States. Moreover, in reviewing that practice, the Federal Circuit below refused to interpret the Tariff Act so as to avoid a violation of international law. In so doing, the court disregarded the venerable principle of statutory construction that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray* v. *Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (Marshall, C.J.).

The Federal Circuit's failure to apply that principle could have serious repercussions for U.S. trade relations with Japan and other countries. When the WTO determines that a Member has violated the Anti-Dumping Agreement, ag-

grieved Members may be authorized to take lawful countermeasures against the non-complying Member that could significantly impair the non-complying Member's trade interests. If the United States' practice of zeroing is maintained, WTO Members aggrieved by that practice may have no choice but to initiate their own WTO proceedings against the United States and to eventually seek authorization to impose countermeasures against the United States, which could include the imposition of additional duties or tariffs on U.S. exports. This Court can, and should, avoid such consequences by granting certiorari and interpreting the Tariff Act in a manner consistent with the United States' international obligations, just as Congress intended.

STATEMENT OF THE CASE

The WTO and the Anti-Dumping Agreement. Today, 147 countries, including Japan and the United States, are Members of the WTO, an international organization providing the common institutional framework for the conduct of trade relations among its Members. The WTO was established in 1995 pursuant to the Agreement Establishing the World Trade Organization ("WTO Agreement"), which incorporates a number of ancillary agreements, including the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Anti-Dumping Agreement. Like all other WTO Members, the United States has agreed to "ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided" in the WTO Agreement. *Id.* art. XVI (4). *See also id.* art. II (2) ("The agreements and associated legal instruments included in Annexes 1, 2, and 3 * * * are * * * binding on all Members.").

One of the most notable features of the WTO is its binding dispute settlement process. Disputes arising under the WTO Agreement are settled by the WTO's Dispute Settlement Body ("DSB"), which is comprised of all WTO Members. If consultation with a Member believed to be in violation of the

WTO Agreement proves fruitless, an aggrieved Member can request the DSB to establish a dispute settlement panel. *See* Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 4, 6 (WTO Agreement, Annex 2). Appeals from panel decisions are heard by the Appellate Body. *Id.* art. 17. If the Appellate Body finds that an action or policy is in violation of the WTO Agreement, it will recommend that the non-complying Member bring the measure into conformity with the Agreement. *Id.* art. 19(1). Absent consensus to the contrary, the Appellate Body's decision, together with the panel's decision as modified by the Appellate Body, shall be adopted by the DSB and "unconditionally accepted by the parties to the dispute." *Id.* art. 17(14).

If the non-complying Member fails to abide by the DSB's ruling, the aggrieved Member may eventually seek authorization from the DSB "to suspend the application to the Member concerned of concessions or other obligations" under the WTO Agreement—*i.e.*, take countermeasures against the non-complying Member. *Id.* art. 22(2). These lawful countermeasures can include, for example, raising tariffs on the non-complying Member's exports beyond those agreed to by the aggrieved Member under the WTO Agreement. Unless the DSB decides "by consensus" to reject the request, the DSB must authorize countermeasures to the extent of the "nullification or impairment" of benefits accruing to the aggrieved Member under the WTO Agreement—that is, to the extent that the aggrieved Member's rights under the WTO Agreement have been injured by the non-complying Member's violation. *Id.* art. 22(4), (6).

In 1994, Congress approved the WTO Agreement by passing the Uruguay Round Agreements Act ("URAA"), 19 U.S.C. §§ 3501 *et seq.* *See* 19 U.S.C. § 3511. Among other things, the URAA amends the Tariff Act to provide that, "[i]n determining * * * whether subject merchandise is being, or is likely to be, sold at less than fair value, *a fair compari-*

son shall be made between the export price or constructed export price and normal value." 19 U.S.C. § 1677b(a) (emphasis added). That language tracks nearly verbatim Article 2.4 of the Anti-Dumping Agreement, which provides that "*[a] fair comparison shall be made between the export price and the normal value.*" Anti-Dumping Agreement art. 2.4 (emphasis added) (Pet. App. 126a).

In a Statement of Administrative Action ("SAA") issued in conjunction with the enactment of the URAA, Congress and the Executive Branch expressly confirmed that the URAA is "intended to bring U.S. law fully into compliance with U.S. obligations under [the Uruguay Round] agreements." *See* H.R. Doc. No. 103-316, Vol. I, at 669 (Pet. App. 130a). In particular, the SAA expressly makes clear that "[t]he requirement of Article 2.4 of the [Anti-Dumping] Agreement that a fair comparison be made between the export price or constructed export price and normal value is stated and implemented by section [1677b]." *Id.* at 820 (Pet. App. 131a). *See also* S. Rep. No. 103-412, at 67 (1994) ("[a]mended section [1677b(a)] incorporates the requirement of Article 2.4 of the Antidumping Agreement that a fair comparison be made between the export price or constructed export price and the normal value").

Proceedings Below. This case arises from Commerce's administrative review of tapered roller bearings imported from Japan for the period October 1, 1998 to September 30, 1999. During that period, prices for many of Koyo's entries were in fact *higher* than normal value, thus generating negative dumping margins. In calculating a weighted average dumping margin for Koyo's entries, however, Commerce treated all negative dumping margins as "zero." That practice resulted in weighted average dumping margins of 14.86% and 17.94% for the two categories of tapered roller bearings at issue here. Had Commerce *not* "zeroed" Koyo's negative dumping margins, however, Koyo's weighted average dumping margins would have been 0%

percent and less than 5%, respectively. Thus, by using a zeroing methodology in this case, Commerce not only substantially inflated Koyo's antidumping liability, but created antidumping liability where none would otherwise have existed.

The Court of International Trade upheld Commerce's determination of Koyo's dumping margins, and the Federal Circuit affirmed. *See* Pet. App. 1a, 19a. The Federal Circuit concluded that the Tariff Act "does not plainly require consideration of only those dumping margins with a positive value." Pet. App. 9a. Thus, the court acknowledged that the statute could be interpreted to permit the calculation of negative dumping margins in the determination of a weighted average dumping margin. The court accordingly considered whether to apply the *Charming Betsy* doctrine, "according to which courts should interpret U.S. law, whenever possible, in a manner consistent with U.S. international obligations." Pet. App. 12a. As Koyo had explained, the WTO Appellate Body had recently concluded that the practice of zeroing violates the Anti-Dumping Agreement. *See* Report of the Appellate Body, *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R (Mar. 1, 2001) (adopted Mar. 12, 2001) ("*EC – Bed Linen*").

The Federal Circuit refused to apply *Charming Betsy*, noting that "the [WTO] decision is not binding on the United States, much less this court." Pet. App. 14a. The court also refused to apply *Charming Betsy* because *EC – Bed Linen* "did not involve the United States." *Id.* Indeed, the court concluded that "the absence of the United States as a party" was "an important distinction." *Id.* In addition, the court observed that *EC – Bed Linen* "dealt with an antidumping investigation as opposed to an administrative review of dumping." *Id.* Although Koyo had explained that the distinction was irrelevant, the court stated simply that it "disagree[d]." *Id.*

In its petition for rehearing, Koyo advised the court of an impending WTO panel report—to be issued in a proceeding "involv[ing] the United States"—which specifically concluded that the *United States*' practice of zeroing violates the Anti-Dumping Agreement. The Federal Circuit denied the petition. Pet. App. 50a. On April 13, 2004, the WTO panel issued its decision. *See* Report of the Panel, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/R (Apr. 13, 2004). Subsequently, the Federal Circuit granted Koyo's motion for a recall and stay of the mandate pending Koyo's filing of a petition for certiorari and this Court's final disposition of this case. Pet. App. 52a. On August 11, 2004, the WTO Appellate Body upheld the panel decision concluding that the United States' practice of zeroing violates the WTO Antidumping Agreement. *See US – Softwood Lumber*, *supra*. On August 31, 2004, the DSB adopted the Appellate Body's decision, together with the panel's decision as modified by the Appellate Body.

SUMMARY OF ARGUMENT

The practice of zeroing violates the Anti-Dumping Agreement. As the WTO Appellate Body has explained, "dumping" within the meaning of that Agreement can be found to exist "only for the product under investigation *as a whole*." *US – Softwood Lumber* ¶ 93 (emphasis added). Because zeroing fails to account for *negative* as well as *positive* antidumping margins, zeroing "means, in effect, that at least in the case of some export transactions, the export prices are treated as if they were less than what they actually are." *Id.* ¶ 101 (emphases omitted). Article 2.4 of the Anti-Dumping Agreement, however, requires "a fair comparison * * * between the export price and the normal value" of a product. As the Appellate Body has held, "a comparison between export price and normal value that does *not* take fully into account the prices of *all* comparable export transactions—such as the practice of 'zeroing' * * * is *not* a "fair compari-

son" between export price and normal value, as required by Article 2.4." *EC – Bed Linen* ¶ 55 (Pet. App. 112a).

By engaging in the practice of zeroing—which the Federal Circuit upheld in this case—the United States is violating its international obligations under the Anti-Dumping Agreement. That alone provides a compelling basis for certiorari. The need for review is underscored, moreover, by the Federal Circuit's refusal to construe the Tariff Act so as to *avoid* a violation of international law. For two hundred years, this Court has consistently honored the principle that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Charming Betsy*, 6 U.S. (2 Cranch) at 118. The Federal Circuit's failure to heed that admonition here conflicts with this Court's precedents. That conflict is particularly intolerable because it poses a serious threat to U.S. trade interests. If the United States' practice of zeroing is maintained, WTO Members aggrieved by that practice may have no choice but initiate their own WTO actions and to eventually seek authorization to impose countermeasures against the United States that could have a substantial impact on U.S. trade.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW UPHOLDS AN INTERPRETATION OF A FEDERAL STATUTE THAT PLACES THE UNITED STATES IN VIOLATION OF ITS INTERNATIONAL OBLIGATIONS.

As the WTO Appellate Body—the entity specifically charged with interpreting the WTO Agreement, which includes the Anti-Dumping Agreement—has repeatedly held, the practice of zeroing is inconsistent with, and thus violates, the Anti-Dumping Agreement. Article VI:1 of the GATT 1994 defines "dumping" as that "by which *products* of one country are introduced into the commerce of another country at less than the normal value of the *products*." GATT 1994 art. VI:1 (emphasis added). Similarly, Article 2.1 of the

Anti-Dumping Agreement—which implements Article VI of the GATT 1994—provides that "a *product* is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the *product* exported from one country to another is less than the comparable price * * * for the like *product* when destined for consumption in the exporting country." Anti-Dumping Agreement art. 2.1 (Pet. App. 126a) (emphasis added).

Thus, as the WTO Appellate Body explained in *US – Softwood Lumber*, "dumping," within the meaning of the Anti-Dumping Agreement, "can therefore be found to exist only for the product under investigation *as a whole*," as opposed to individual sales, models, or categories of products. *US – Softwood Lumber* ¶ 93 (emphasis added). Likewise, the term "margins of dumping," as used in the Anti-Dumping Agreement, "can be found only for the product under investigation *as a whole*." *Id.* ¶ 96 (emphasis added).

As discussed, Article 2.4 of the Anti-Dumping Agreement requires "a fair comparison * * * between the export price and the normal value" of a product. In failing to account for *negative* margins as well as *positive* margins, the practice of zeroing does not result in a "fair comparison" between the export price and the normal value of the product *as a whole*. As the Appellate Body explained in *US – Softwood Lumber*:

> Zeroing means, in effect, that at least in the case of some export transactions, the export prices are treated as if they were less than what they actually are. Zeroing, therefore, does not take into account the entirety of the prices of some export transactions * * *. Zeroing thus inflates the margin of dumping for the product as a whole." [*US – Softwood Lumber* ¶ 101 (emphases omitted).]

This has been the WTO's consistently held view. In *EC – Bed Linen*, the Appellate Body explained that:

> a comparison between export price and normal value that does *not* take fully into account the prices of *all* comparable export transactions—such as the practice of "zeroing" at issue in this dispute—is *not* a "fair comparison" between export price and normal value, as required by Article 2.4 and Article 2.4.2. [*EC – Bed Linen* ¶ 55 (Pet. App. 112a.]

Similarly, in *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* ("*US – Corrosion-Resistant Steel*")—another proceeding involving the United States—the Appellate Body concluded that:

> [w]hen investigating authorities use a zeroing methodology such as that examined in *EC –Bed Linen* to calculate a dumping margin, *whether in an original investigation or otherwise*, that methodology will tend to inflate the margin calculated. Apart from inflating the margins, such a methodology could, in some instances, turn a negative margin of dumping into a positive margin of dumping * * *. Thus, the inherent bias in a zeroing methodology of this kind may distort not only the magnitude of a dumping margin, but also a finding of the very existence of dumping. [Report of the Appellate Body, WT/DS244/AB/R ¶ 135 (Dec. 15, 2003) (adopted Jan. 9, 2004) (Pet. App. 102a-103a) (emphasis added).[2]]

Thus, in *US – Softwood Lumber*, the WTO Appellate Body concluded that "the United States acted inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement* in determining the existence of margins of dumping on the basis of a methodology incorporating the practice of 'zeroing.'" *US –*

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[2] In *US – Corrosion-Resistant Steel*, the Appellate Body ultimately concluded that it could not resolve the dispute at issue because the panel had failed to make certain factual findings. Report of the Appellate Body ¶ 137 (Pet. App. 103a-104a).

Softwood Lumber ¶ 117. That conclusion applies with equal force in this and all other cases in which the United States uses zeroing in determining dumping margins. As a Member of the WTO, however, the United States expressly agreed to "ensure the conformity of its laws, regulations and *administrative procedures* with its obligations as provided" in the WTO Agreement. WTO Agreement art. XVI (4) (emphasis added). *See also* Anti-Dumping Agreement art. 18.4 ("Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations, and *administrative procedures* with the provision of this Agreement as they may apply for the Member in question.") (emphasis added). Indeed, Congress went so far as to amend the Tariff Act to incorporate the Anti-Dumping Agreement's "fair comparison" requirement for the express purpose of "bring[ing] U.S. law fully into compliance with U.S. obligations under [the WTO Agreement]." Pet. App. 130a (SAA). *See* 19 U.S.C. § 1677b(a).

The Federal Circuit nevertheless upheld Commerce's practice of zeroing in this case, thus conferring upon Commerce the authority to place the United States in violation of its international obligations. That decision could have serious adverse consequences for U.S. trade interests. Under the WTO Agreement, a Member aggrieved by another Member's violation of the Agreement may be authorized to take countermeasures to the extent that benefits accruing to that Member have been "nullifi[ed] or impair[ed]." *See supra* at 5. If the United States' practice of zeroing is maintained, WTO Members aggrieved by that practice may have no choice but to initiate their own WTO actions and to eventually seek authorization to impose countermeasures against the United States, which could include additional duties or tariffs on U.S. exports. As the petition notes, the Congressional Budget Office estimates that the United States will collect about $2.35 billion antidumping and countervailing

duties in the years 2005-2009, and $3.85 billion in such duties in the years 2004-2014. Pet. 17-18. Thus, if allowed to stand, the decision below could potentially result in the imposition of substantial additional duties or tariffs on U.S. exports in the years ahead.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS ON THE APPLICATION OF THE *CHARMING BETSY* DOCTRINE.

The fact that the decision below upholds an administrative practice that places the United States in violation of its international obligations alone provides a compelling basis for certiorari. In upholding that practice, however, the Federal Circuit refused to construe the Tariff Act so as to *avoid* a violation of international law. In that respect, the decision below cannot be reconciled with this Court's precedents on the application of the *Charming Betsy* doctrine. That conflict provides an additional basis for this Court's review. *See* S. Ct. R. 10(c).

Since Chief Justice John Marshall famously declared on behalf of this Court some two hundred years ago that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains," *Charming Betsy*, 6 U.S. (2 Cranch) at 118, this Court has consistently applied that teaching to avoid potential conflicts between domestic and international law. In *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963), for example, the Court considered whether the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, applied to American-owned ships sailing under foreign flags. Invoking *Charming Betsy*, the Court refused to construe the Act to apply to foreign-flag vessels where such application would be contrary to a "well-established rule of international law." *Id.* at 21. The Court was particularly concerned that the application of the Act to such vessels could lead to

"international discord" and "invite retaliatory action from other nations." *Id.* Thus, in the absence of clear congressional intent, the Court preferred to tread carefully in this " 'delicate field of international relations.' " *Id.* (quoting *Benz* v. *Compania Naviera Hildalgo*, 353 U.S. 138, 147 (1957)).

Likewise, in *Weinberger* v. *Rossi*, 456 U.S. 25 (1982), the Court considered whether the term "treaty" in a statute prohibiting employment discrimination against U.S. citizens on U.S. military bases overseas included executive agreements as well as Article II, Senate-ratified, treaties. *See* Pub. L. 92-129, § 106, 85 Stat. 355 (1971). As the Court observed, an interpretation that limited the term "treaty" to Article II treaties would have effectively "repudiate[d]" executive agreements in force at the time the statute was enacted. *Weinberger*, 456 U.S. at 31. Applying *Charming Betsy*, the Court concluded that "some affirmative expression of congressional intent to abrogate the United States' international obligations [would be] required in order to construe the word 'treaty' * * * as meaning only Art. II treaties." *Id.* at 32. Because such "affirmative expression" was lacking, the court refused to read the statute to "abrogate the United States' international obligations."

There was no reason for the Federal Circuit to depart from those settled precedents here. As the court concluded, the Tariff Act "does not plainly require consideration of only those dumping margins with a positive value." Pet. App. 9a. Thus, the court was left to choose between two competing interpretations of the Act: one that would effectively "repudiate" an executive agreement and "invite retaliatory action from other nations," and one that would give effect to the United States' international obligations and avoid "international discord." Contrary to this Court's precedents—and the judgment of the WTO—the court chose the former interpretation. Although that interpretation happened to be Commerce's, an agency's interpretation that violates international

law is simply not reasonable, and thus should not be entitled to deference. *See* Pet. 18-19.

At bottom, the court refused to apply *Charming Betsy* because, in its view, it was not clear that Commerce's use of zeroing in this case violated the Anti-Dumping Agreement. Thus, the Federal Circuit purported to distinguish *EC – Bed Linen* on the ground that "it dealt with an antidumping investigation as opposed to an administrative review of dumping." Pet. App. 14a. But that is a distinction without a difference. As the Appellate Body has emphasized: "[w]hen investigating authorities use a zeroing methodology such as that examined in *EC – Bed Linen* to calculate a dumping margin, *whether in an original investigation or otherwise*, that methodology will tend to inflate the margin calculated * * * [and], in some instances, turn a negative margin of dumping into a positive margin of dumping." *US – Corrosion-Resistant Steel* ¶ 135 (emphasis added) (Pet. App. 102a).[3]

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[3] The Federal Circuit apparently assumed that Article 2 of the Anti-Dumping Agreement applies only to the determination of dumping margins during an investigation. *See* Pet. App. 14a-15a. To the contrary, Article 2 of the Agreement broadly governs the "Determination of Dumping"—"whether in an original investigation or otherwise." *US – Corrosion-Resistant Steel* ¶ 135 (Pet. App. 102a). *See* Anti-Dumping Agreement art. 2 (Pet. App. 126a). Article 5 governs the "Initiation and Subsequent Investigation," whereas Article 9 governs the "Imposition and Collection of Anti-Dumping Duties"—including the imposition of retrospective antidumping duties during an administrative review. *Id.* arts. 5, 9. That Article 2 of the Agreement broadly governs the "Determination of Dumping"—in both investigations *and* administrative reviews—is made clear by Article 9.3, which provides that "[t]he amount of the anti-dumping duty shall not exceed the margin of dumping *as established under Article 2*." Anti-Dumping Agreement art. 9.3 (emphasis added).

The court also purported to distinguish *EC – Bed Linen* on the ground that "it did not involve the United States." Pet. App. 14a. Indeed, the court emphasized that "the absence of the United States as a party" was an "important distinction." *Id.* Since then, of course, the WTO Appellate Body has specifically concluded—in a proceeding that directly examined the zeroing practice of the United States—that the United States' zeroing practice violates the Anti-Dumping Agreement as well. There is thus no longer any question that, by using zeroing in calculating dumping margins, the United States is violating its international obligations. In upholding Commerce's interpretation of the Tariff Act here, the Federal Circuit has sanctioned that result. As this Court has admonished, however, "[i]f the United States is to be able to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors, its courts should be most cautious before interpreting its domestic legislation in such manner as to violate international agreements." *Vimar Seguros y Reaseguros, S.A.* v. *M/V Sky Reefer*, 515 U.S. 528, 539 (1995). The Federal Circuit's failure to heed that admonition in this case fully warrants this Court's review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted, and the judgment below reversed.

Respectfully submitted,

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